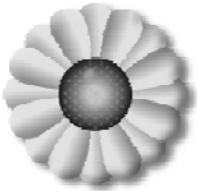


KANSAS 2012



BASIC & ADVANCED WORKERS COMPENSATION

Diane Jordan – Division of Workers Compensation

History - 1911

2

- ☐ State of Kansas enacted Workers Compensation
- ☐ Nationwide trend
- ☐ Reaction to move from Agricultural to Manufacturing
- ☐ Benefits Limited to certain “Hazardous Employments”

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Exclusive Remedy

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- ☐ The exclusive remedy prohibits the employee from filing a civil suit against the employer even if there is negligence on the part of the employer
- ☐ K.S.A. 44-501 (b)

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Jurisdictional – 1970s

4

- ☐ 1970 Occupation Safety & Health Act
- ☐ Created National Commission on State Workmen's Compensation Laws
- ☐ 1972 Published Report
- ☐ Recommendations to be addressed by 1975
- ☐ Kansas enacted changes in 1974
 - ☐ Many terms not clearly defined
 - ☐ Employers felt they were being forced to pay for conditions due to non-work related injuries and the natural aging process.

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Application of Act

5

- ☐ From the 1974 Law Book
 - ☐ K.S.A. 44-505 . . . the workmen's compensation act shall apply to all employments wherein employers employ workmen within this state except that such act shall not apply to: (1) Agricultural pursuits and employment incident thereto, . . . (2) any employment, . . . Wherein the employer had a total gross annual payroll for the preceding calendar year of not more than ten thousand dollars (\$10,000) for all workmen . . .

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Updates to 1974 Application

6

- ☐ \$10,000 is now \$20,000
- ☐ Terminology changed workmen to workers
- ☐ But mostly unchanged
- ☐ Not changed in 2011

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Sole Proprietor

7

- ☐ Includes: Partnerships; LLCs; any business that is not incorporated
- ☐ Wages to owner and family member not counted toward threshold
- ☐ Once under the Act – all employees even family members covered
- ☐ Owner must elect **into** coverage if desired

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Corporation

8

- ☐ ANY incorporated business
- ☐ ALL payroll including draws by owner counted towards threshold
- ☐ If Act applies owners of 10% or more of the corporate stock may elect **out of** coverage

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Agricultural Pursuits

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- ☐ Witham v. Parris, 11 Kan. App. 2d 303, 720 P.2d 1125 (1986)
- ☐ Frost v. Builders Service, Inc., 13 Kan. App. 2d 5, 760 P.2d 43, rev. denied 243 Kan. 778 (1988)
- ☐ Board Decisions:
 - ☐ Ivey v. Grain Sorghum Hogs, Inc., WCAB Docket No. 177,500 & 177,501 (May 1994);
 - ☐ Milbrandt v. Sam Krehbiel, WCAB Docket No. 248,237 (March 2000); and
 - ☐ Besler v. Sabatini Trust, WCAB Docket No. 236,676 (March 2001)

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Coverage

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- ☐ Licensed Insurance Carrier – Insurance Carriers are regulated by KS Insurance Department
- ☐ Self Insurance – Program administered by the Division of Workers Compensation
- ☐ Group – Funded Pool – a group of employers meeting certain statutory requirements – Administered by Kansas Department of Insurance.

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Independent Contractors

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- ☐ Not counted as payroll as long as truly independent
- ☐ IF so, should ask that provide Proof of Coverage
OR
- ☐ Affidavit of Exempt Status

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Affidavit of Exempt Status

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- ☐ New – K.S.A. 2011 Supp. 44-5,127
- ☐ Permits “any person” who is not required to be covered under workers compensation to execute affidavit of exempt status
- ☐ Form available on the Kansas Department of Insurance web site
http://www.ksinsurance.org/consumers/docs/WC_Affidavit.pdf

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Other Major Historical Changes

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- ☐ Issues not that different than in 1974
- ☐ Issues include: Repetitive Use Injuries; Work Disability; Safety Rules; Drugs & Alcohol; Paying for Injuries that are not work related
- ☐ Major Changes: 1986; 1993; & Now 2011

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Effective Date of Changes

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May 15, 2011

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2011 Legislative Changes

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- ☐ Affidavit of Exempt Status
- ☐ Notice of Injury Requirements
- ☐ Compensability threshold – Prevailing Factor
- ☐ Tightened stands for alcohol or drug use
- ☐ Workplace Safety
- ☐ Horseplay and Fighting
- ☐ Parallel Extremities & Work Disability
- ☐ Average Weekly Wage
- ☐ Increasing Benefit caps

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Notice of Injury

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- ☐ 30 Days, weekends included
 - ☐ 20 Days if Employee seeks medial treatment before notifying employer
 - ☐ 20 if Employee no longer works for the employer
 - ☐ But never more than 30 days from the date of accident

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Notice of Injury Oral or Written

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- ☐ Oral Notice
 - ☐ If employer has designated department/individual and communicated such to employee in writing, notice to other individual/department insufficient
 - ☐ If no designation, notice must be given to supervisor or manager
- ☐ Written Notice
 - ☐ Claimant must prove was sent to principal location of employment and received by employer
- ☐ Notice must include particulars of injury and it must be apparent employee is claiming benefits or suffered a work-related injury

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New Test

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Prevailing Factor

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Prevailing Factor

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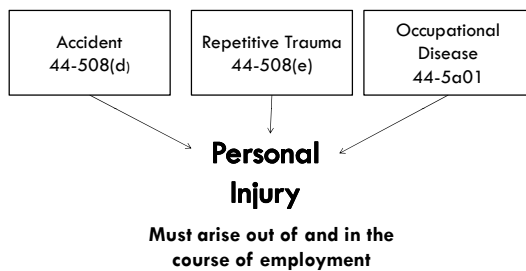
- “Prevailing factor” = primary factor in relation to any other factor
- In determining what constitutes the “prevailing factor” in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties

Note of Interest: There are cases in the preliminary hearing stages concerning prevailing factor. Having creditable medical records and information is a must. This also helps determine if there are preexisting conditions.

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Personal Injury

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Exclusions Old vs. New Law

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- Old— Personal injury excluded the result of the natural aging process and activities of day to day living
- New – In addition excludes:
 - ▣ Aggravations or exacerbations
 - ▣ Neutral Risk
 - ▣ Personal Risk
 - ▣ Idiopathic causes

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Drug Testing – Old Law

22

- ☐ Probable Cause which could include employer mandated testing; testing in course of medical treatment; testing in accordance with federal law
- ☐ However, had to be evidence the impairment contributed to the accident

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Drug Testing – New Law

23

- ☐ Roadblocks to admission of test (such as probable cause) removed
- ☐ Added safeguards for employer-controlled testing
- ☐ Presumption the impairment contributed to accident (rebuttable)
- ☐ Refusal to submit to testing results in forfeiture of benefits if cause to suspect use

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Workplace Safety – New Law

24

- ☐ Compensation disallowed if results from:
 - ☐ Deliberate intention to cause such injury
 - ☐ Willful failure to use a guard or protection required pursuant to any statute and provided by employer
 - ☐ Willful failure to use reasonable and proper guard and protection voluntarily furnished by the employer
 - ☐ Reckless violation of employer's workplace safety rules

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Fighting and Horseplay

25

- ☐ Fighting - Old Law
 - ☐ Compensable if about work
 - ☐ Compensable if employer had knowledge
- ☐ Horseplay – Old Law
 - ☐ Compensable to non-participating employee
- ☐ New Law
 - ☐ Compensation Disallowed from “the employee’s voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise”

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Safety – Old vs. New Law

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	Pre 2011	Post 2011
Deliberate Intention to cause such injury	Yes	Yes
Willful failure to use a guard or protection . . . required by statute	Yes	Yes
Willful failure to use a reasonable and proper guard and protection voluntarily furnished by the employer	Yes	Yes
Reckless violation of employer's workplace safety rules	No	Yes
Voluntary participation in fighting or horseplay	No	Yes

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Employer Tips

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- ☐ Focus on obviousness of risk of harm actually suffered;
- ☐ Have safety measures in place;
- ☐ Educate employees about proper safety procedures;
- ☐ **Enforce** safety procedures consistently including seatbelt use

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Social & Recreational Activities

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- ☐ Not covered if:
 - ☐ No duty to attend
 - ☐ Not specifically instructed to be performed by the employer
- ☐ *Hizey vs. MCI – Docket # 97947*
 - ☐ Employee on duty
 - ☐ Activity encouraged & supervised by employer
 - ☐ On Company premises
 - ☐ Benefits employer as well as employee

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Going & Coming Rule

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- ☐ In General – NOT Compensable
- ☐ Except – Old Law
 - ☐ Liability of Employer
 - ☐ Employer's premises or only route with special risk or hazard
- ☐ New Law Added
 - ☐ Premises "owned" or under "exclusive control"
 - ☐ Special risk or hazard must be connected to the employment and not to the general public

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Mental Stress

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There must be a work-related physical injury and the traumatic neurosis has to be directly traceable to the physical injury

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Heart Attacks

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- ☐ Exertion must be more than the employee's usual work
 - ☐ Variety of task
 - ☐ Unusual exertion
 - ☐ Nature of work
 - ☐ Environment

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Heat Strokes

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- ☐ Environmental Heat related strokes are usually found to be compensable
- ☐ Under the new Prevailing Factor test many claims are being denied but we are not seeing many go to hearings

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Medical Benefits

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- ☐ An employer/insurance carrier is liable for medical expenses which may be reasonably necessary to cure and relieve the worker from the effect of the injury
- ☐ The insurance carrier or self-insured employer shall reimburse the worker for an amount comparable to the mileage expenses provided in K.S.A. 44-515 for approved medical services that exceeds five miles round trip

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Medical – New Law

34

- ☐ Employer has right to select treating physician
 - ☐ No medical after MMI unless proven necessary
 - ☐ Right to future medical treatment not absolute
 - ☐ Claimant must prove need for future medical as result of work injury
 - ☐ Unauthorized Medical still \$500
- Suspend benefits for refusal to submit to exam at employer's request

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Authorized Treating Physician

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- ☐ Now defined in K.S.A. 2011 Supp. 44-508 (v)
"Authorized treating physician" means a licensed physician or other health care provider authorized by the employer or insurance carrier or both, or appointed pursuant to court-order to provide those medical services deemed necessary to diagnose and treat an injury arising out of and in the course of employment.
- ☐ Opinion of authorized treating physician presumed to be determinative in regards to work status

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Temporary Disability

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- ☐ K.S.A. 2011 Supp. 44-510c(b)(2)
 - ☐ Employee entitled to TTD if employer cannot accommodate temporary restrictions of authorized treating physician
 - ☐ No TTD if employee is terminated for cause or voluntarily resigns and employer could have accommodated
 - ☐ No TTD for weeks during which employee receives unemployment benefits
 - ☐ 7-Day Waiting Period
 - ☐ Temporary total disability is two-thirds of the average weekly wage, not to exceed the state maximum in effect at the time of injury

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Forms and Publication

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- ☐ Workers Compensation Landing Page:
- ☐ [Http://www.dol.ks.gov/WorkComp/Default.aspx](http://www.dol.ks.gov/WorkComp/Default.aspx)
- ☐ Process of Updating ALL forms
- ☐ Law Book available this fall
- ☐ Website redesign – broken links
- ☐ **Hearing Forms** – Please check for new ones

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Required Forms

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- ☐ K-WC 40 Posting Notice
- ☐ K-WC 27 Important Information For Injured Employees
- ☐ K-WC 1101 A – Accident Report (Employers First Report of Accident)
 - ☐ Filed within 28 Days of employer's notice
 - ☐ NOTE: EDI (Electronic Data Interchange) – Mandatory Effective April 2013

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Handbook K-WC 25

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- ☐ Updated for New Law Changes
- ☐ Information on each section of the Division
- ☐ In English and Spanish (K-WC 250)
- ☐ Benefit Information
- ☐ Insurance Information

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Electronic Records Request Program

40

- ☐ Enroll in the (Electronic) Records Request Program
- ☐ New & old WC records can be downloaded, printed or saved.
- ☐ Once enrolled, the assigned ID and password allow multiple staff access for easy pick up
- ☐ Application to enroll on KDOL Work Comp Landing Page
- ☐ Questions to: Research (785) 296-4000 ext. 2120 or WCRecordsRequest@dol.ks.gov

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Current Benefit Levels

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- ☐ July 1, 2012 – June 30, 2013
- ☐ Current Levels
 - ☐ Maximum \$570
 - ☐ Minimum \$25
 - ☐ Minimum Survivors Benefit \$380
 - ☐ Mileage Reimbursement 55¢ per mile
- ☐ <http://www.dol.ks.gov/Files/PDF/NewKwc107.pdf>

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Increased Benefit Caps

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- ☐ **Caps:**
 - ☐ Death benefit – \$300,000
 - ☐ Includes \$1,000 for appointment of conservator, if required
 - ☐ Permanent total – \$155,000
 - ☐ Permanent partial– \$130,000
 - ☐ Functional impairment – \$75,000
 - ☐ Applies even if TTD/TPD paid
- ☐ Historic Benefit Levels
 - ☐ <http://www.dol.ks.gov/WorkComp/current.aspx>

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Death Benefits

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- ☐ \$300,000 Maximum to spouse and/or dependent children
- ☐ \$40,000 Lump sum immediately
- ☐ Minimum benefit is 50% of the state's average weekly wage (effective July 1, 2012, is \$380)
- ☐ \$5,000 Burial allowance
- ☐ \$1,000 for cost of court-appointed conservator where necessary

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Helpful Web Sites

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- ☐ Kansas Department of Labor
 - ☐ www.dol.ks.gov
- ☐ Kansas Insurance Department
 - ☐ www.ksinsurance.org
- ☐ National Council on Compensation Insurance
 - ☐ www.ncci.com
- ☐ Kansas Legislature
 - ☐ www.kslegislature.org

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Links to Courts

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- ☐ Supreme Court & Court of Appeals
 - ☐ <http://www.kscourts.org>
- ☐ Workers Compensation Appeals Board
 - ☐ <http://www.dol.ks.gov/WorkComp/SearchRES.aspx>

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Historic Cases

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Supreme Court:

- ☐ Horse Play – Coleman v. Armour Swift-Eckrich – Docket Number 94324
- ☐ Parallel Injuries – Casco v. Armour Swift-Eckrich – Docket No. 93984
- ☐ Parallel Injuries – Hall v. Dillon Co. Inc. – Docket No. 99476
- ☐ Bergstrom v. Spears Mfg. – Docket No. 99369

Court of Appeals:

Recreational - Hizey v. MCI – Docket No. 97947

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Recent Cases for Pre-2011 Law

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Supreme Court

- ☐ Day to Day Living – Bryant v. Midwest Staff Solutions, Inc. Docket Number 99913

Workers Compensation Appeals Board

- ☐ Safety Rules & Going to and Coming From – Williams v. Petromark Drilling, LLC Docket Number 1054109

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Questions . . .

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Contact Information

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